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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
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09/280,567 03/30/99 BUMOL

T 0409020136

EXAMINER

HM12/0302

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BRUNOVSKIS, P

ART UNIT

PAPER NUMBER

1632

DATE MAILED:

03/02/00

Please find below and/or attached an Office communication concerning this application or proceeding.

Commissioner of Patents and Trademarks

Office Action Summary

Application No.
09/280,567

Applicant(s)
Bumol et al.

Examiner
Peter Brunovskis

Group Art Unit
1632



☐ Responsive to communication(s) filed on _____.

☐ This action is **FINAL**.

☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

A shortened statutory period for response to this action is set to expire 1 month(s), or thirty days, whichever is longer, from the mailing date of this communication. Failure to respond within the period for response will cause the application to become abandoned. (35 U.S.C. § 133). Extensions of time may be obtained under the provisions of 37 CFR 1.136(a).

Disposition of Claims

☒ Claim(s) 1-35 is/are pending in the application.

Of the above, claim(s) _____ is/are withdrawn from consideration.

☐ Claim(s) _____ is/are allowed.

☐ Claim(s) _____ is/are rejected.

☐ Claim(s) _____ is/are objected to.

☒ Claims 1-35 are subject to restriction or election requirement.

Application Papers

☐ See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.

☐ The drawing(s) filed on _____ is/are objected to by the Examiner.

☐ The proposed drawing correction, filed on _____ is ☐ approved ☐ disapproved.

☐ The specification is objected to by the Examiner.

☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. § 119

☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).

☐ All ☐ Some* ☐ None of the CERTIFIED copies of the priority documents have been
☐ received.

☐ received in Application No. (Series Code/Serial Number) _____.

☐ received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

*Certified copies not received: _____.

☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

Attachment(s)

☐ Notice of References Cited, PTO-892

☐ Information Disclosure Statement(s), PTO-1449, Paper No(s). _____

☐ Interview Summary, PTO-413

☐ Notice of Draftsperson's Patent Drawing Review, PTO-948

☐ Notice of Informal Patent Application, PTO-152

--- SEE OFFICE ACTION ON THE FOLLOWING PAGES ---

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DETAILED ACTION

Election/Restriction

Restriction to one of the following inventions is required under 35 U.S.C. 121:

- I. Claims 1-3, and 6, drawn to methods for treating liver diseases using mFLINT protein, classified in class 514, subclass 2.
- II. Claim 4, drawn to a method for treating sepsis using mFLINT protein, classified in class 514, subclass 2.
- III. Claim 5, drawn to a method for treating inflammatory disorders using mFLINT protein, classified in class 514, subclass 2.
- IV. Claim 7, drawn to a method for treating abnormal apoptosis using mFLINT protein, classified in class 514, subclass 2.
- V. Claims 8-11, drawn to methods for treating ischemia-associated injury or disorder disorders using mFLINT protein, classified in class 514, subclass 2.
- VI. Claim 12, drawn to a method for treating inflammatory disorders using mFLINT protein, classified in class 514, subclass 2.
- VII. Claim 13, drawn to a method of preventing damage to a cardiac myocyte in an individual with abnormal myocardial ischemia using mFLINT protein, classified in class 514, subclass 2.

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- VIII. Claim 14, drawn to a method for treating Type I diabetes using mFLINT protein, classified in class 514, subclass 2.
- IX. Claim 15, drawn to methods for treating cancer using mFLINT protein, classified in class 514, subclass 2.
- X. Claims 16-20, 26, and 27 drawn to methods for treating chemotherapy patients using mFLINT protein, classified in class 514, subclass 2.
- XI. Claims 21-25, drawn to methods for in vitro treatment of hematopoietic progenitor cells using mFLINT protein and use of said cells for in vivo treatment, classified in class 435, subclass 7.21 or class 514, subclass 2.
- XII. Claim 28, drawn to a method for treating aplastic anemia using mFLINT protein, classified in class 514, subclass 2.
- XIII. Claim 29, drawn to a method for treating myelodysplastic syndrome using mFLINT protein, classified in class 514, subclass 2.
- XIV. Claim 30, drawn to a method for treating a pancytopenic condition using mFLINT protein, classified in class 514, subclass 2.
- XV. Claims 31, 32, and 35 drawn to mFLINT polynucleotides and an mFLINT transgenic mouse, classified in class 536, subclass 23.5 and class 800, subclass 18.
- XVI. Claims 33, 34, drawn to mFLINT polypeptides, classified in class 530, subclass 350.

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Although there are no provisions under the section for "Relationship of Inventions" in MPEP 806.05 for inventive groups that are directed to different products or methods, restriction is deemed to be proper between groups I-XIV because these methods appear to constitute patentably distinct inventions, each with a distinct purpose and further comprising distinct methodologies utilizing different products and technical considerations. For example, each of the methods of groups I-XIV utilizes different modes of administration, different effective dosages, different clinical endpoints, and different patient groups. Similarly, restriction is deemed to be proper between groups XV and XVI because their products appear to constitute patentably distinct inventions comprising different forms (transgenic mice in group XV) or biochemical compounds (polynucleotides of group XVI and polypeptides of group XVI) that have different structures, functions, and biochemical activities.

Invention XVI and inventions I-XIV are related as product and process of use. The inventions can be shown to be distinct if either or both of the following can be shown: (1) the process for using the product as claimed can be practiced with another materially different product or (2) the product as claimed can be used in a materially different process of using that product (MPEP § 806.05(h)). In the instant case the product of invention XVI can be used in a materially different process comprising use as an immunogen for the production of antibodies or in any one of the methods of groups I-XIV.

Because these inventions are distinct for the reasons given above and have acquired a separate status in the art as shown by their different classification and the search required for each

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group is not required for the other groups, restriction for examination purposes as indicated is proper.

Applicant is advised that the reply to this requirement to be complete must include an election of the invention to be examined even though the requirement be traversed (37 CFR 1.143).

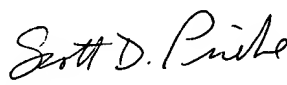
Applicant is reminded that upon the cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 CFR 1.48(b) if one or more of the currently named inventors is no longer an inventor of at least one claim remaining in the application. Any amendment of inventorship must be accompanied by a petition under 37 CFR 1.48(b) and by the fee required under 37 CFR 1.17(I).

Certain papers related to this application may be submitted to Art Unit 1632 by facsimile transmission. The FAX number is (703) 308-4242 or 305-3014. The faxing of such papers must conform with the notices published in the Official Gazette, 1156 OG 61 (November 16, 1993) and 1157 OG 94 (December 28, 1993) (see 37 CFR 1.6(d)). NOTE: If applicant *does* submit a paper by FAX, the original copy should be retained by applicant or applicant's representative. NO DUPLICATE COPIES SHOULD BE SUBMITTED, so as to avoid the processing of duplicate papers in the Office.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Peter Brunovskis whose telephone number is (703) 305-2471. The examiner can normally be reached on Monday through Friday from 8:30 AM to 5 PM. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jasmine Chambers, can be reached at (703) 308-2035.

Any inquiry of a general nature or relating to the status of this application should be directed to the Group receptionist whose telephone number is (703) 308-0196.

Peter Brunovskis, Ph.D.
Patent Examiner
Art Unit 1632
February 28, 2000


SCOTT D. PRIEBE, PH.D
PRIMARY EXAMINER